

**BEFORE THE INVESTOR PROTECTION DIRECTOR
OF THE STATE OF DELAWARE**

IN THE MATTER OF:)
)
)
WINYAH FINANCIAL SERVICES, L.L.C.,) Investor Protection Case No. 19-0075
WINYAH FINANCIAL, L.L.C., SUN)
FINANCIAL SERVICES, INC., AND ELBERT)
C. SMALLS,)
)
Respondents.)

ADMINISTRATIVE COMPLAINT

The Investor Protection Unit of the Delaware Department of Justice (the “IPU”) hereby submits its administrative complaint, pursuant to the Delaware Securities Act, 6 *Del. C.* § 73-101, *et seq.* (the “Act”), against Winyah Financial Services, L.L.C., Winyah Financial, L.L.C., Sun Financial Services, Inc., and Elbert C. Smalls regarding violations of the Act and the Rules Pursuant to the Act (the “Rules”).

Summary of this Action

1. When investment adviser Elbert Smalls stopped receiving commissions on annuities he had sold to clients, he changed the fee structure charged by his investment advisory to increase fees such that they became unreasonable. He did this without having made disclosures to his clients about how the new fee structure would negatively impact the clients’ earnings. Accordingly, Mr. Smalls, and his investment advisory, engaged in dishonest and unethical practices pursuant to the Delaware Securities Act. This action

seeks restitution for those clients who paid unreasonable fees, to prevent the Respondents from seeking registration in Delaware, and prevent further violations of the Delaware Securities Act.

2. From 2005 to 2020, Sun Financial Services, Inc. (as defined below with Winyah Financial Services, L.L.C. and Winyah Financial, L.L.C., together herein called “SFS”) was registered with the IPU as an investment adviser firm, and Elbert C. Smalls (“Mr. Smalls”), the owner of SFS, was registered with the IPU as an investment adviser representative. SFS and Mr. Smalls are together referred to as “Sun.”
3. Mr. Smalls used SFS to conduct his investment adviser business. He also sold insurance products, including annuities, through SFS and derived commissions and residuals therefrom. Annuities are insurance products that make periodic payments over time, both to the purchaser as a return on investment and to the salesperson as a commission. Sun sold annuities as retirement income vehicles to its investment advisory clients.
4. In 2014, Sun changed its billing practices. It previously had charged clients fees based on a percentage of the client’s total assets under management, which is relatively common for investment advisers. However, Sun moved to an hourly billing model in 2014. This occurred after a number of Sun clients’ annuities matured, thus depleting the assets on which the percentage-based fee was calculated. Hourly billing is uncommon in the investment adviser industry.
5. The hourly billing model allowed Sun to replace the commission revenue it lost due to the maturation of annuities. However, as applied, it resulted in excessive fees for clients. Clients who had previously been paying fees equivalent to two percent or less of their assets under management were suddenly paying hourly fees that resulted, in

some cases, in amounts equal to 10%, or as high as 72%, of their assets under management. These fees were unreasonable in light of the circumstances for several clients.

6. In addition, the switch to hourly billing was made without adequate disclosure. Clients were not told how the change, by depleting more significant assets, would impact their ability to achieve their investment goals. Nor did Sun disclose that it would charge clients its hourly rate for travel time, menial tasks, or – on at least one occasion – for time that was simultaneously being billed to other clients.
7. Along with charging excessive fees, Sun failed to maintain its records in accordance with the Delaware Securities Act, 6 *Del. C.* § 73-101, *et seq.* The lack of accurate records makes it difficult to determine the complete scope of Sun’s conduct in violation of the Act, including the extent to which excessive fees were charged, and clients harmed as a result. Nonetheless, sufficient evidence exists to demonstrate the violations set forth herein.
8. After the IPU opened an investigation into Sun’s billing practices, SFS and Mr. Smalls chose to withdraw registration as an investment adviser and investment adviser representative, respectively, from Delaware in 2020 and register instead in Maryland under a different name, Winyah Financial Services, L.L.C. also known as Winyah Financial, L.L.C. Despite this apparent effort to evade oversight by IPU, Mr. Smalls continues to work covertly in Delaware and service clients here in violation of the Act’s requirement that he be registered with the state of Delaware.
9. Mr. Smalls, both individually and through SFS, continues to operate in violation of the Act. The IPU brings this action to prevent Mr. Smalls and SFS from continuing to

harm Delawarean investors by preventing them from operating in Delaware, provide restitution to Delaware investors who paid unreasonable fees, and ensure compliance with the Act and the Rules Pursuant to the Delaware Securities Act.

Parties

10. The Plaintiff, the Investor Protection Unit of the Delaware Department of Justice is the securities regulator for the state of Delaware, with a mandate to enforce the Act, 6 *Del. C.* § 73-101, *et seq.*
11. The Respondent entities, Winyah Financial Services, L.L.C., Winyah Financial, L.L.C., and Sun Financial Services, Inc., are different names for an investment adviser firm operated by Mr. Smalls, with the name change not reflecting any change in business ownership, activity, or operation. According to CRD¹, SFS maintains a current principal place of business at [REDACTED]. On information and belief, SFS also maintains a place of business at [REDACTED].
12. From 2005 through 2020, SFS was a Delaware-registered investment adviser (CRD# 136690) as that term is defined in the Act and was registered with the IPU when most of the acts pleaded in this complaint occurred. During that time, SFS operated from the Bethany Beach location. SFS voluntarily terminated its Delaware investment adviser registration on April 6, 2020.

¹ CRD, or Central Registration Depository, is a database run by the Financial Industry Regulatory Authority and contains records of investment professionals, including information about their location and registration status. Each registrant, whether a firm or an individual, is assigned a unique number, or CRD number, to help identify them in the system. CRD serves as the database of record for IPU's registration of investment professionals and firms.

13. SFS was organized under Delaware law on September 16, 1988, however, it is no longer incorporated in Delaware. According to CRD filings², SFS changed its name from Sun Financial Services, Inc. to Winyah Financial Services, LLC³ sometime between January 11, 2021, and September 14, 2021. It incorporated as Winyah Financial Services, L.L.C. in Maryland in 2019, and subsequently forfeited its corporate registration and is no longer in good standing in Maryland. It also incorporated as Winyah Financial, L.L.C., in Maryland, on August 29, 2019, though that is not the name of the entity registered on CRD, which remains Winyah Financial Services, LLC.
14. Regardless, both Winyah Financial Services, L.L.C. and Winyah Financial, L.L.C. have listed Elbert C. Smalls as the registered agent, with the [REDACTED] Maryland address as the principal office. CRD records are clear that this was a name change and not a winddown of SFS. References in this complaint to SFS are intended to include these entities at all relevant times, without regard to whether its name at such time was Sun Financial Services, Inc., Winyah Financial, L.L.C. or Winyah Financial Services, L.L.C.
15. Respondent, Mr. Smalls, was a Delaware-registered investment adviser representative as that term is defined in the Act when the principal events at issue in this complaint occurred. He is also SFS's sole employee, owner, chief executive officer, and chief compliance officer. Mr. Smalls is currently registered as an investment adviser representative in Maryland (CRD #1181701). On information and belief, Mr. Smalls

² These filings are made by investment advisers who are registered with the SEC and state securities administrators to disclose information about their business.

³ CRD reflects this entity as Winyah Financial Services, LLC, while the Maryland limited liability corporation was known as Winyah Financial Services, L.L.C.

lives at [REDACTED] in a home that may be owned by Waterfront Properties Partners, LLC, an entity in turn owned by Mr. Smalls.

16. Mr. Smalls may be served at the following addresses: [REDACTED]. Mr. [REDACTED]. Mr. Smalls is and was the only registered investment adviser representative affiliated with SFS. He is the only person authorized to act on behalf of SFS, including by engaging in supervisory and compliance responsibilities.

Jurisdiction and Venue

17. This tribunal has subject matter jurisdiction over this matter pursuant to 6 *Del. C.* § 73-102 and Rule 225A(c) pursuant to the Act, which empower the Attorney General to delegate to a presiding officer the powers necessary to adjudicate any suit, action or proceeding arising under the Act or any rule or order thereunder.
18. This tribunal has personal jurisdiction over the Respondents pursuant to, *inter alia*, 6 *Del. C.* § 73-702, which requires every applicant for registration under the Act to irrevocably appoint a member of the IPU as the applicant's agent for service of process in any suit, action or proceeding arising under the Act or any rule or order thereunder.
19. During registration, Mr. Smalls, in writing, submitted to the IPU's jurisdiction. The IPU is part of the Delaware Department of Justice, a Delaware statewide agency.
20. This tribunal also has personal jurisdiction pursuant to 10 *Del. C.* § 3104 because, *inter alia*, the Respondents transact business in the State; have caused injury in the State or outside the State to Delawareans, during the regular course of business and conduct in the State and from which Respondents have derived substantial revenue; and Mr. Smalls has an interest in, uses or possesses real property in this State.

Statutory Authority

General Authority and Rulemaking Power

21. The purpose of the Delaware Securities Act, 6 *Del. C.* § 73-101, *et seq.* “is to prevent the public from being victimized by unscrupulous or overreaching broker-dealers, agents, investment advisers or investment adviser representatives in the context of effecting transactions in securities or giving investment advice, as well as to remedy any harm caused by securities law violations.” 6 *Del. C.* § 73-101(b).
22. The Act provides that the Director “may make, amend and rescind rules, regulations, forms and orders to carry out and define the provisions of [the Act].” 6 *Del. C.* § 73-102(b). The Rules are located at 6 *Del. Admin. C.* § 100, *et seq.*
23. The Act authorizes the Director or her representatives to examine the records of registered investment advisers:

All the records referred to in subsection (a) of this section are subject at any time or from time to time to such reasonable periodic, special or other examinations by representatives of the Director, within or without this State, as the Director deems necessary or appropriate in the public interest or for the protection of investors.

6 *Del. C.* § 73-303(e).

Dishonest and Unethical Practices

24. Section 73-304(a)(7) of the Act prohibits investment advisers from engaging in “dishonest or unethical practices within or outside this State.”
25. Rule 709 pursuant to the Act, titled “Dishonest or Unethical Practices” expounds on §73-304(a)(7) of the Act. It provides a non-exhaustive list of actions that constitute dishonest

and unethical practices, including “[c]harging a client an advisory fee that is unreasonable in light of the type of services to be provided, the experience and expertise of the adviser, the sophistication and bargaining power of the client, and whether the adviser has disclosed that lower fees for comparable services may be available from other sources.” Rule 709(a)(11) pursuant to the Act.

Advisory Activities

26. Section 73-305(a) and § 73-305(b) of the Act address advisory activities and declare it unlawful for an investment adviser to engage in fraudulent or misleading actions, respectively.

Books and Records Requirements

27. Section 73-303(a) of the Act requires registered investment advisers to “make and keep such accounts, correspondence, memoranda, papers, books and other records as the Director prescribes by rule or order....”
28. Rule 706(e)(1) pursuant to the Act, titled Recordkeeping Requirements of Investment Advisers, states books and records must be maintained “for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record....”

Investment Adviser Registration

29. Section 73-301(c) of the Act requires an investment adviser or investment adviser representative to be registered to transact business in Delaware.

Factual Allegations

- I. **In 2014, Sun transitioned its billing practice from charging a percentage of Assets Under Management to an hourly rate, which in turn led to Sun charging excessive fees.**
30. The IPU conducted an on-site examination of SFS in 2019, during which Mr. Smalls acknowledged that the IPU would have some problems with Sun's billing practices.
31. Prior to 2014, Sun charged its clients fees calculated as a percentage of each client's Assets Under Management (the "AUM Fee Structure"). This is the predominant method of billing in the investment advisory industry.
32. Under the AUM Fee Structure, Sun's clients were charged no more than 2% of the client's assets under management ("AUM").
33. In 2014, Sun changed its fee structure to an hourly rate of \$175. While an hourly fee structure is not inherently unethical, as applied by Sun, the change in fee structure was disadvantageous to Sun's clients and therefore became unethical. ,
34. The same rate of \$175 per hour was charged for any task Sun completed, including ministerial and non-investment advisory work involving clients.
35. This change to an hourly fee structure, and the charges for administrative and other non-investment advisory work, led to a significant increase in fees charged to Sun's clients relative to the AUM-based fee they previously incurred. The hourly based fees frequently bore no relation to the value of services received by the client, were unreasonable in light of the type of services provided, and changed the overall net investment returns for those clients. Sun never disclosed the risk of such a fee disparity to these clients.

36. In many cases, the value of clients' investment portfolios were detrimentally impacted while the fees increased; the fees were excessive enough to wipe out gains from investing, if any. The change in fee structure was thus advantageous to Sun, to the detriment of clients, as it inhibited growth of their assets.
37. The following is a non-exhaustive collection of examples where this new fee structure led to fees that were unreasonable and excessive:⁴
- a. Investor 1 and Investor 2 paid total investment adviser fees of \$17,950 to Sun during the 5-year period from 2015 to 2019 using the hourly fee structure. By contrast, their fees would have been only \$1,837 if they had been calculated using the rate of 2% AUM. The excessive fees were \$16,113, or more than 877% of what the clients would have been charged by nearly any other investment adviser serving clients in compliance with the Act. Annual fees during the period ranged from 17.18% to 27.90% as a percentage of AUM.
 - b. Investor 3 and Investor 4 paid total investment adviser fees of \$15,610 to Sun during the 5-year period from 2015 to 2019 using the hourly fee structure. By contrast, their fees would have been only \$933 if they had been calculated using the rate of 2% AUM. The excessive fees were \$14,677, or more than 1,573% of what the clients would have been charged by nearly any other investment adviser serving clients in compliance with the Act. Annual fees during the period ranged from 22.31% to 72.58% as a percentage of AUM.

⁴ Fees based on 2% of AUM may be considered by some to be industry standard or still deemed as high. Two percent is being used as a comparison because it is what Sun formerly charged clients.

- c. Investor 5 and Investor 6 paid total investment adviser fees of \$44,975 to Sun during the 5-year period from 2015 to 2019 using the hourly fee structure. By contrast, their fees would have been only \$2,532 if the fees had been calculated using the rate of 2% AUM. The excessive fees were \$42,443, or more than 1,676% of what the clients would have been charged by nearly any other investment adviser serving clients in compliance with the Act. Annual fees during the period ranged from 28.45% to 50.79% as a percentage of AUM.
- d. Investor 7 and Investor 8 paid total investment adviser fees of \$29,050 to Sun during the 5-year period from 2015 to 2019 using the hourly fee structure. By contrast, their fees would have been only \$1,865 if the fees had been calculated using the rate of 2% AUM. The excessive fees were \$27,185, or more than 1,458% of what the clients would have been charged by nearly any other investment adviser serving clients in compliance with the Act. Annual fees during the period ranged from 21.22% to 57.94% as a percentage of AUM.
- e. Investor 9 paid total investment adviser fees of \$52,975 to Sun during the 5-year period from 2015 to 2019 using the hourly fee structure. By contrast, their fees would have been only \$4,036 if the fees had been calculated using the rate of 2% AUM. The excessive fees were \$48,939, or more than 1,213% what the client would have been charged by nearly any other investment adviser serving clients in compliance with the Act. Annual fees during the period ranged from 10.14% to 49.06% as a percentage of AUM.

38. Based on records available to the IPU, Sun's clients were overcharged almost half a million dollars during the relevant period based on a comparison to a 2% AUM calculation.⁵

II. Sun engaged in dishonest and unethical practices by charging unreasonable advisory fees.

39. Section 73-304(a)(7) of the Act prohibits dishonest and unethical practices, the Rules pursuant to the Act provide more elaborate details. Rule 709(a)(11) pursuant to the Act, prohibits charging advisory fees that are "unreasonable in light of the type of services to be provided, the experience and expertise of the adviser, the sophistication and bargaining power of the client, and whether the adviser has disclosed that lower fees for comparable services may be available from other sources." Analyzed under these prongs, Sun's hourly billing model resulted in unreasonable and excessive fees.

A. Sun's advisory fees were unreasonable in light of the type of services provided.

40. Sun's investment advisory services primarily involved monitoring insurance products, like annuities, that Sun had previously sold clients.

41. Sun included insurance planning and IRA-required minimum distributions as a service provided, and charged for such activity accordingly. This occurred despite the fact that the annuities Sun sold do not require ongoing monitoring. Numerous clients were billed for unnecessary annuity monitoring.

⁵ Sun's most recent filing on CRD indicates that as of September 14, 2021, Sun charges both an hourly fee and a percentage of AUM. Because of the paucity of documents the IPU was able to obtain from Sun, it was unable to assess what type of AUM was charged, whether it was charged instead of or along with an hourly fee, and how it impacted the reasonableness of overall fees charged to clients.

42. During the relevant time, Sun did not actually advise the clients to purchase or exchange annuities, nor does it appear that Sun actively managed or made trades in client accounts.
- B. Sun’s advisory fees were unreasonable in light of its failure to disclose that lower fees for comparable services may be available from other sources.**
43. In 2014, when Sun changed its fee structure, SFS entered into Investment Management Agreements (“Agreements”) with its clients, which were signed by Mr. Smalls on SFS’s behalf.
44. The Agreements did not advise clients that “lower fees for comparable services may be available from other sources.” (Rule 709(a)(11) pursuant to the Act).
45. At all relevant times, neither Sun’s Form ADV⁶ nor Form ADV Part 2-B *Brochure Supplement*⁷ advised clients that lower fees for comparable services may be available from other sources. (Rule 709(a)(11) pursuant to the Act).
46. Nor did Sun’s advisory service result in better outcome for clients.
- C. Sun’s advisory fees were unreasonable given the relative sophistication and bargaining power of Sun compared to the clients.**
47. Sun was more sophisticated and held greater bargaining power than its clients.
48. Sun’s clients consisted of people Mr. Smalls knew well, having worked with them for many years. Many of these clients are working-class individuals who trusted Mr. Smalls and relied on him to provide advice. Many had limited investing experience outside of working with Mr. Smalls or had never worked with another financial

⁶ Form ADV is a reporting form used by investment advisers to who are registered with SEC and state securities administrators. The form is filed through CRD and requires investment advisers to disclose information about their business.

⁷ Form ADV 2-B is a brochure supplement that contains information about the specific individuals providing the investment advice and interacting with clients.

professional. By the time Sun changes its fee structure, many long-term clients had worked with Sun, and only Sun, for years.

49. The lack of experience with other investment advisers and lack of financial sophistication means that clients may not have realized that Sun declined to provide active management of client accounts, or that the fees they paid Sun were excessive relative to industry standard or the amount being managed or earned.
50. Some of these clients had purchased annuities with Mr. Smalls and at least one client, Investor 14, simply continued their affiliation with Sun due to a lack of understanding that they did not need to pay Sun in order to receive annuity payouts. Investor 14 only learned that retaining Sun's services was not necessary when they reached out directly to the insurance company.
51. Having learned from the annuity company that they did not need to maintain an advisory relationship with Sun to receive payouts, Investor 14 complained about Sun's fees and terminated their relationship with Sun.
52. The Agreements did not cap the number of hours Sun could bill a client nor did they require Sun to provide an estimate of hours necessary to properly advise the client.
53. Because of the relative disparity in sophistication and bargaining power, only one client negotiated such a fee cap, but that appears to be the only example of a deviation from Sun's standard Agreement. It appears that all other clients acquiesced to Sun's terms, due to the differential in bargaining power and in the absence of a disclosure that they could get the same or similar services at a lower cost elsewhere.

D. Sun’s advisory fees were unreasonable given the experience and expertise of the investment adviser.

54. Mr. Smalls did not have any specialized experience or credentials that differentiated him from many other individuals in the industry to warrant fees that were significantly higher than the industry standard, even when considering his years of experience in the industry.

III. Sun billed clients its advisory rate for non-advisory activity and billed multiple clients for working at the same time.

55. Sun billed clients for the time spent on ancillary, non-advisory tasks without regard to whether such activity was appropriately charged as advisory services, and without regard for the client’s AUM.

A. Sun billed clients its advisory rate for travel time, driving up fees while no advisory activity was being conducted.

56. Sun listed “Travel to client’s home,” with no further details, under “Type of Services Provided”⁸ for numerous clients’ accounts. A non-exhaustive list of clients who were charged for travel time includes: Investor 3, Investor 4, Investor 16, Investor 17, Investor 18, Investor 19, Investor 20, and Investor 21.

57. The Agreements did not advise clients that they would be billed Sun’s full hourly advisory rate for such ancillary activity as travel time.

58. Clients including Investor 5, Investor 6, and Investor 11 informed the IPU they were not aware that they would be billed the hourly advisory rate for Mr. Smalls to drive to their appointments.

⁸ This is a document Sun provided to the IPU, and not something provided to clients.

59. During the IPU's examination, Mr. Smalls verbally acknowledged Sun had charged its hourly advisory rate to Investor 9 for five hours at \$175 an hour for a total of \$875 in fees, for Mr. Smalls' time driving to their home and searching the home for a stock certificate – none of which involves investment advisory services or was necessary to the provision of advisory services.

B. On at least one occasion, Sun billed three clients the full advisory rate for the same time.

60. In February and March 2020, Sun presented some of its clients with a document entitled "Time / Activity Log" (collectively, the "Time Logs").

61. The Time Logs purport to reflect a dated, itemized list of work performed for the client during 2018 and 2019 and time spent on each task.

62. The Time Logs were reviewed, accepted, and signed by the client(s) to which they were presented.

63. The Time Logs reflect that on April 9, 2019, Sun billed non-Delaware client Investor 15 for 5.13 hours of work performed between 6:46 am and 11:55 am for "Research Investments and prepare Investment Summary for Client".

64. The Time Logs also reflect that on April 9, 2019, Sun billed Delaware client Investor 10 for 1.97 hours of work performed between 9:50 am and 11:48 am for "Research and prepare outline of Retirement income for future growth and income."

65. Despite having already billed two other clients for the exact same time, the Time Logs reflect that Sun billed Delaware clients Investor 5 and Investor 6 for 6.92 hours of work performed between 8:00 am and 2:55 pm on April 9, 2019, for "Research Investments and prepare Investment Summary for Client."

IV. Sun failed to properly maintain its books and records.

66. As an investment adviser registered under the Act, Sun was required to make and keep true, accurate and current certain records, as required by § 73-303 of the Act and Rules 706 and 709 pursuant to the Act.
67. In spite of these obligations, Sun was not able to provide these records requested by the IPU in connection with its examination of Sun.
68. Further, Sun failed to file required CRD/IARD⁹/ADV annual amendments for 2020, 2021, 2022, and 2023. Nor has Sun filed a new ADR brochure since 2021. Such filings are necessary to keep records true, accurate and current.
69. Sun's failure to maintain records as required by the Act hindered the IPU's examination and made its investigation into Sun's activities more difficult. This subverted the IPU's ability to protect investors, as contemplated by the Act.

A. Sun was unable to produce documents requested by the IPU.

70. In connection with the examination, the IPU requested, among other things, (i) Sun's procedures for supervising its affiliated investment adviser representatives, (ii) Sun's client contracts, (iii) Sun's invoices sent to clients, and (iv) records of hourly time for clients.
71. Sun was unable to provide many of these documents when requested due to their lack of immediate availability, in violation of Rule 706 pursuant to the Act's requirement that such records be maintained and preserved in an easily accessible place for a period

⁹ IARD, or Investment Adviser Registration Depository, is an electronic filings system sponsored by the Securities and Exchange Commission for the purpose of IA Firm Registration/Reporting, IA Firm Public Disclosure, IA Representative Registration, and IA Representative Public Disclosure.

of at least five years from the end of the fiscal year in which the last entry on such record was made.

72. Sun failed to maintain documents and records of customer complaints, including complaints the IPU learned of directly from investors during the course of its subsequent investigation.
 73. During the examination, Sun informed the IPU that Investor 14 terminated their services, but omitted disclosure of Investor 14's complaint about excessive fees, thus failing to meet Sun's disclosure obligation as Mr. Smalls was directly asked about this during the examination.
 74. Sun failed to inform the IPU that a number of other clients complained to Sun as well, including Investor 11, Investor 5, Investor 6 and Investor 22. The IPU only learned about these complaints from the clients themselves.
 75. While Sun did provide some of these documents after the examination, their spontaneous appearance raised questions as to whether they were created for purposes of the investigation, rather than having been maintained in the ordinary course as required by Rule 706 pursuant to the Act.
- B. Sun failed to maintain written agreements and bills for at least one client.**
76. Rule 706(a) pursuant to the Act requires investment advisers to "make and keep true, accurate and current" certain books and records, including "(5) [a]ll bills or statements ... relating to the business of the investment adviser" and "(10) [a]ll written agreements (or copies thereof) entered into by the investment adviser with any client"
 77. In connection with the examination and ensuing investigation, the IPU requested copies of, among other things, (i) all investment advisory agreements for all of Sun's clients

between the years 2014 and 2019 and (ii) all invoices issued to Sun's clients between the years 2014 and 2019.

78. Sun was unable to produce a written agreement for married couple Investor 23 and Investor 24, Delaware clients it served from 2014 and 2019.
79. Despite what should have been over 100 payments from Investor 23 and Investor 24 to Sun between 2014 and 2019, Sun was only able to provide twenty-six (26) invoices for the IPU's review, all of which were issued during 2018 and 2019.

V. Sun improperly maintained Limited Power of Attorney ("LPOA") for numerous clients and failed to disclose when its custodial relationship with Schwab was terminated.

80. Around 2014, when Sun changed its billing practices, many of Sun's clients opened retail accounts with Charles Schwab & Co., Inc. ("Schwab") at Sun's instruction.¹⁰
81. Many of Sun's clients with Schwab accounts signed paperwork granting Mr. Smalls LPOA over their Schwab accounts.
82. The LPOA is not intended to survive the termination of the client relationship per Schwab's policy.
83. However, Sun had about 75 existing LPOAs that were not terminated when the client's relationship with Sun ended.
84. Sun's failure to terminate LPOAs, a violation of Schwab's policy, factored into Schwab's decision to terminate its relationship with Sun on December 16, 2020, as described below.

¹⁰ At all relevant times, Sun had a retail account with Charles Schwab & Co., Inc. ("Schwab") for the purposes of maintaining custody of client funds. Each Sun client had his or her own retail account opened at Schwab under Sun's direction. At all relevant times, Schwab was the only custodian for Sun's client accounts.

85. As of January 26, 2021, Schwab stated it does not have a custodial relationship with Mr. Smalls on the Independent Registered Advisor Services¹¹ platform where his clients had opened accounts.
86. On September 14, 2021, nine months after Schwab terminated the relationship, Sun continued to list Schwab as its custodian on its form ADV. The September 14, 2021 ADV filing is the most recent filing Sun has made on CRD; it thus continues to appear that Schwab is the custodian, thus making the filing inaccurate and misleading.

VI. Sun is operating as an unregistered investment adviser in Delaware.

87. Section 73-301(c) of the Act prohibits an investment adviser from transacting business in Delaware unless it is (1) registered, or (2) it has no place of business in the state and it has not had more than five clients who reside in the state during the preceding 12-month period.
88. In April 2020, after failing to cure deficiencies identified by the IPU in its examination of SFS, Mr. Smalls terminated Sun's Delaware registration in an apparent effort to evade the duties and requirements of a Delaware investment adviser and to avoid responding to the IPU's further inquiries.
89. Since terminating registration in Delaware, Sun registered as an investment adviser in Maryland and Texas.
90. Although Sun set up a Maryland office, on information and belief, Sun continues to operate its advisory business out of Mr. Smalls' home in Bethany Beach, DE.
91. Further, Sun has "adjusted" the number of Delaware clients it serves by only claiming one half of a married couple as a client, while telling them he would do work for them

¹¹ This is Schwab's platform that assists firms with their business.

as a couple. This new practice appears to have been adopted to allow Sun to claim no more than five Delaware clients, thus evading the Act's requirement under § 73-301(c) of the Act which requires out-of-state investment advisers with five or more clients in Delaware register in Delaware (the "de minimus rule").

92. By continuing to operate his business from Delaware, and by servicing more than five Delaware clients regardless of location, SFS and Mr. Smalls are operating in Delaware as an unregistered investment adviser, and investment adviser representative, respectively.

Count 1 – Advisory Activities

(Against all Respondents for unlawful advisory activities in violation of § 73-305(a) of the Act)

93. All paragraphs are fully incorporated herein by reference.
94. Section 73-305(a) of the Act provides, in pertinent part, that "[i]t is unlawful for an investment adviser, federal covered adviser or investment adviser representative ... to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon another person."
95. Sun engaged in acts, practices or a course of conduct that operated to deceive clients and regulators.
96. The following are examples of Sun deceiving clients or engaging in acts and practices that operated to deceive clients:
 - a. Sun charged clients its standard hourly advisory rate for ancillary, non-advisory matters without transparency around these fees, which served to mask the unreasonableness of the fees from clients;

- b. Sun failed to advise clients that they did not need to affiliate with Sun in order to receive their annuity payments and distributions; and
 - c. Sun billed multiple clients during the same time period without disclosing this to the impacted clients.
97. The following are examples of Sun deceiving regulators or engaging in acts and practices that operated to deceive regulators:
- a. Sun failed to document and produce customer complaints upon request during the examination and provided misleading statements to the IPU that one client, Investor 14, terminated the client relationship because he was “now retired, prefer not to pay for the services for an Investment Adviser;”¹²
 - b. Mr. Smalls terminated his investment adviser representative registration with the State of Delaware, indicating that he had moved operations to Maryland, when on information and belief, he continues to operate in Delaware;
 - c. Similarly, SFS also terminated its Delaware investment adviser registration on April 3, 2020, stating that it had moved operations to Maryland, when, on information and belief, SFS continues to operate in Delaware as an unregistered investment adviser;
 - d. CRD indicates that Winyah Financial Services, LLC – the registered entity – is a Maryland LLC, when this is not true. Winyah Financial Services, LLC, is not in good standing in Maryland. This impacts the accuracy of the filing and the ability of regulators to properly assess the registered entity;

¹² This is a direct quote from a document Sun provided the IPU for the examination in response to its request for a list of terminated clients and the reason for termination.

- e. Sun was retained by a married couple as clients but only listed one spouse as an active Delaware client to avoid having to register under Delaware's de minimus rule; and
 - f. Sun continued to list Schwab as a custodian on ADV filings even though Schwab had terminated the relationship over nine months prior.
98. The examples above describe acts, practices and courses of business which operate or would operate as a fraud or deceit upon another person, including Sun's clients and regulators.
99. Each occurrence constitutes a violation of § 73-305(a) of the Act.

Count 2 – Advisory Activities

(Against all Respondents for unlawful advisory activities in violation of § 73-305(b) of the Act)

100. All paragraphs are fully incorporated herein by reference.
101. Section 73-305(b) of the Act provides that “[i]t is unlawful for an investment adviser, federal covered adviser or investment adviser representative ... to make any untrue statement of fact that a reasonable client or prospective client would deem material or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.”
102. Sun made untrue statements of fact that a reasonable client or prospective client would deem materially misleading and omitted facts from other statements that were necessary to make those statements not misleading.
103. The following are examples of statements and omissions that misled clients:

- a. When Sun changed its fee structure, it omitted to tell clients the new hourly billing rates could be higher than when they had been charged based on a percentage of AUM, and exorbitant relative to their AUM;
- b. Sun omitted to inform clients that lower fees may be available from other investment advisers;
- c. Investor 14 was misled to believe that he must retain Sun to receive payouts and distributions from his annuity;
- d. Inaccurate recordkeeping led to billing clients with invoices that contain omissions and misleading statements; and
- e. The records Sun provided to clients often lacked substantive detail regarding task and time, as described above, thus omitting to fully describe to clients what they were being charged for, including when being charged for ancillary, non-advisory tasks such as driving time.

104. The examples above describe untrue statements of fact, and omissions to state material facts, that a reasonable client or perspective client would deem material and misleading.

105. Each occurrence constitutes a violation of § 73-305(b) of the Act.

Count 3 – Dishonest and Unethical Practices

(Against all Respondents for dishonest and unethical practices in violation of § 73-304(a)(7) of the Act and Rule 709 pursuant to the Act)

106. All paragraphs are fully incorporated herein by reference.

107. Section § 73-304(a) of the Act provides, “The Director may by order deny, suspend or revoke any registration ... if the Director finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser,

any partner, officer, director or any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser ...: (7) [h]as engaged in dishonest or unethical practices within or outside this State.”

108. Rule 709(a) pursuant to the Act provides a non-exhaustive list of acts that constitute dishonest or unethical practices.
109. Rule 709(b) pursuant to the Act reiterates that the list in 709(a) is “not exclusive” and provides that “[e]ngaging in other conduct such as ... exploitation, non-disclosure, incomplete disclosure or misstatement of material facts, manipulative or deceptive practices ... shall be deemed an unethical business practice. ...”
110. The following dishonest or unethical practices were uncovered by the IPU during the examination and subsequent investigation of Sun:
 - a. Sun failed to maintain records (Rule 709(a)(4)(B) pursuant to the Act);
 - b. Sun retroactively created records requested by the IPU (Rule 709(a)(4)(B)) pursuant to the Act;
 - c. Sun chose to terminate its registration in Delaware in an effort to evade the strictures of the Act and Rules (Rule 709(b) pursuant to the Act);
 - d. Sun failed to inform clients that its ongoing involvement was not needed to collect annuity payments (Rule 709(a)(12)(A) pursuant to the Act);
 - e. Sun charged advisory fees without providing advisory services (Rule 709(a)(11) pursuant to the Act; and

f. Sun failed to record and report Investor 14's complaints of excessive fees to the IPU, instead offering a misleading statement about why Investor 14 terminated the relationship (Rule 709(b) pursuant to the Act).

111. Each occurrence constitutes dishonest and unethical practices in violations of § 73-304(a)(7) of the Act.

Count 4 – Books and Records Requirements

(Against the SFS Respondents for failure to maintain records in violation of § 73-303(a) of the Act and Rule 706 pursuant to the Act)

112. All paragraphs are fully incorporated herein by reference.

113. Section 73-303(a) of the Act provides that “[e]very registered broker-dealer and investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books and other records as the Director prescribes by rule or order, except as provided by § 15 of the Securities Exchange Act 1934 [15 U.S.C. § 78o] (in the case of a broker-dealer) and § 222 of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-18a] (in the case of an investment adviser). All records so required, with respect to an investment adviser, shall be preserved for such period as the Director prescribes by rule or order.”

114. Rule 706(a) pursuant to the Act further provides that “[e]very investment adviser registered or required to be registered under the Act shall make and keep true, accurate and current [certain] records,” followed by a list of the requisite records.

115. Sun failed to make and keep true, accurate and current records as follows:

a. Sun did not accurately document time billed to SFS clients (Rule 706(a)(1) pursuant to the Act);

- b. On at least one occasion, SFS billed multiple clients for the same time (Rule 706(a)(1) pursuant to the Act); and
 - c. SFS was unable to produce written client agreements for Investor 23 and Investor 24 (Rule 706(a)(10) pursuant to the Act).
116. Sun also failed to immediately produce documents requested by the IPU for the examination (Rule 706(g) pursuant to the Act).
117. Each occurrence constitutes a failure to comply with the books and recordkeeping requirements in violation of § 73-303(a) of the Act and Rule 706 pursuant to the Act.

Count 5 – Books and Records Requirements

(Against the SFS Respondents for failure to maintain records

in violation of § 73-303(d) of the Act)

118. All paragraphs are fully incorporated herein by reference.
119. Section 73-303(d) of the Act provides that “ [i]f the information contained in any document filed with the Director is or becomes inaccurate or incomplete in any material respect, the registrant or federal covered adviser shall file a correcting amendment promptly if the document is filed with respect to a registrant, or when such amendment is required to be filed with the Securities and Exchange Commission if the document is filed with respect to a federal covered adviser, unless notification of the correction has been given under § 73-302(b), (c) or (d) of this title.”
120. Filings that must be kept accurate and complete include filings in CRD.

121. SFS has failed to file correcting amendments to CRD filings as follows:

- a. SFS failed to update CRD/IARD/ADV Filings with the necessary annual amendments from 2020 to 2023;
- b. SFS did not update its change of status with Schwab in CRD/IARD/ADV Filings;
- c. SFS has not filed a new brochure in CRD/IARD/ADV Filings since 2021;
- d. SFS still had Schwab listed in CRD/IARD/ADV Filings as the custodian as of September 2021, over nine months after Schwab terminated the relationship; and
- e. SFS states on CRD that the entity Winyah Financial Services, LLC is a Maryland entity, which is not true, given that the name of this entity was forfeited and it is not in good standing in Maryland.

122. Each occurrence constitutes a failure to meet the books and recordkeeping requirements in violations of § 73-303(d) of the Act.

Count 6 – Books and Records Requirements

(Against the SFS Respondents for failure to maintain records in violation of § 73-303(e) of the Act and Rule 706 pursuant to the Act)

123. All paragraphs are fully incorporated herein by reference.

124. Section 73-303(e) of the Act provides, in relevant part, “[a]ll the records referred to in subsection (a) of this section are subject at any time or from time to time to such reasonable periodic, special or other examinations by representatives of the Director, within or without this State, as the Director deems necessary or appropriate in the public interest or for the protection of investors.”

125. SFS was unable to provide all client agreements at the announced examination when requested by the IPU (Rule 706(a)(10) pursuant to the Act).

126. Each occurrence constitutes a failure to meet the books and recordkeeping requirements in violations of § 73-303(e) of the Act.

Count 7 – Unregistered Adviser

(Against all Respondents for failure to register in violation of § 73-301(c) of the Act)

127. All paragraphs are fully incorporated herein by reference.

128. Section 73-301(c) of the Act provides that “[i]t is unlawful for any person to transact business in this State as an investment adviser or as an investment adviser representative unless:” a person is registered in Delaware, or has no place of business in Delaware and has had no more than 5 clients in Delaware during the preceding 12-month period.

129. SFS withdrew its Delaware registration in April 2020 and therefore is unregistered in Delaware.

130. Sun continues to maintain an office in Delaware.

131. Sun has more than 5 clients in Delaware.

132. Sun therefore unlawfully transacts business as an investment adviser in Delaware.

133. Each occurrence constitutes a failure to register in violation of § 73-301(c) of the Act.

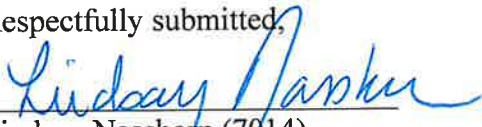
Request for Relief

WHEREFORE, as a result of the violations identified above, and for the protection of the investing public in the future, the IPU respectfully requests that the Presiding Officer appointed pursuant to 6 Del. C. § 73-102 of the Act and Rule 225A(C) pursuant to the Act, enter an order granting the following relief:

- (a) Enjoining all Respondents, Sun Financial Services, Inc., Winyah Financial Services, LLC, Winyah Financial, LLC, and Mr. Smalls from seeking

- registration as an investment adviser, investment adviser representative, broker dealer, or broker dealer agent in Delaware for five years;
- (b) Enjoining SFS and Mr. Smalls from conducting or transacting securities business in Delaware for five years;
 - (c) Enjoining SFS and Mr. Smalls from owning any portion of any business or gaining profits from any business conducting or transacting securities business in Delaware for five years;
 - (d) Enjoining SFS and Mr. Smalls from further engaging in the unlawful acts identified herein;
 - (e) Requiring SFS and Mr. Smalls to pay restitution plus interest to all clients that were charged unreasonable fees;
 - (f) Disgorging SFS and Mr. Smalls, of profits obtained through charging clients excessive fees; and
 - (g) Ordering any other ancillary relief which the Presiding Officer determines to be in the public interest.

Respectfully submitted,


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Dated: July 18, 2024